

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

Blue Spike, LLC,

Plaintiff,

V.

Texas Instruments, Inc., et al.,

Defendants.

CASE NO. 6:12-cv-499 MHS

LEAD CASE

Jury Trial Demanded

**AGREED MOTION TO DISMISS DEFENDANT UMAMI CO. AND
ENTER CONSENT JUDGMENT AND INJUNCTION**

Plaintiff Blue Spike, LLC (“Blue Spike”) and Defendant Umami Co. (“Umami”), file this Agreed Motion to Dismiss under Fed. R. Civ. P. 41(a)(1)(A)(ii). Blue Spike and Umami have agreed to dismiss all claims of this Civil Action and have reached final agreement on settlement of the claims made in this action, and state as follows:

1. This Court has jurisdiction over the parties and the subject matter of this action.
2. Umami agrees it infringes one or more claims of U.S. Patents Nos. 7,346,472 (the '472 Patent), 7,660,700 (the '700 Patent), 7,949,494 (the '494 Patent), and 8,214,175 (the '175 Patent, and together with the '472, '700, and '494 Patents, the "Patents-in-Suit").
3. Umami recognizes that 35 U.S.C. §282 presumes the Patents-in-Suit are valid and further agrees that the Patents-in-Suit are valid.
4. Umami further agrees the Patents-in-Suit are enforceable.
5. Blue Spike agrees that all infringement claims in this Civil Action brought by Blue Spike against Umami should be hereby dismissed with prejudice on the basis of

the settlement reached and acknowledgments regarding infringement, validity and enforceability of the asserted Patents-in-Suit. (See attached Proposed Agreed Order of Dismissal).

6. Umami is enjoined from engaging in the following content recognition activities covered by one or more claims of the Patents-in-Suit. The enjoined activity includes the following:

- (a) making, using, selling, offering for sale, or importing into the United States;
- (b) contributing to the conduct of others in making, using, selling, offering for sale, or importing into the United States; and/or
- (c) inducing others to make, use, sell, offer for sale, or import into the United States:

any apparatus, system or method as embodied in the Umami TV applications, software, systems, and technology using audio fingerprinting or any Umami product that is not colorably different.

7. In paragraph 6, the terms/phrases “(a) making, using, selling, offering for sale, or importing into the United States; (b) contributing to the conduct of others in making, using, selling, offering for sale, or importing into the United States; and/or (c) inducing others to make, use, sell, offer for sale, or import into the United States” have the meaning ascribed to them under 35 U.S.C. §271, as interpreted by the United States Supreme Court and the United States Court of Appeals for the Federal Circuit.

8. Blue Spike has not released, and nothing in this motion shall be construed as a release or discharge of any claim Blue Spike has or may have in the future against any other defendant named in this action.

9. Each party shall bear its own costs and attorneys' fees.

WHEREFORE, for all the foregoing reasons, Plaintiff, Blue Spike, LLC and Defendant, Umami Co., respectfully request that this Court enter an Agreed Order of Dismissal and Consent Judgment and Injunction in this Civil Action.

Respectfully submitted,

/s/ Randall T. Garteiser

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this document was served on all counsel who are deemed to have consented to electronic service. Local Rule CV-5(a)(3)(A). Pursuant to Federal Rule of Civil Procedure 5(d) and Local Rule CV-5(d) and (e), all other counsel of record not deemed to have consented to electronic service were served with a true and correct copy of the foregoing by email.

/s/ Randall T. Garteiser

CERTIFICATE OF CONFERENCE

I certify that on behalf of Blue Spike, LLC, I have met and conferred with counsel for Defendant on June 24, 2013 regarding the relief requested herein. Counsel for Defendant has agreed to this motion.

/s/ Christopher A. Honea